

## § 4.201

### § 4.201 Definitions.

*Administrative law judge (ALJ)* means an administrative law judge with OHA appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

*Agency means:*

(1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust person-  
ality; and

(2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

*BIA* means the Bureau of Indian Affairs within the Department of the Interior.

*Board* means the Interior Board of Indian Appeals within OHA.

*Day* means a calendar day.

*Decedent* means a person who is deceased.

*Decision or order (or decision and order)* means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust person-  
ality;

(2) The decision issued by an attorney decision maker in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is deceased by reason of unexplained absence.

*Devise* means a gift of property by will. Also, to give property by will.

*Devisee* means a person or entity that receives property under a will.

*Estate* means the trust or restricted land and trust person-  
ality owned by the decedent at the time of death.

*Formal probate proceeding* means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

*Heir* means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

*Individual Indian Money (IIM) account* means an interest-bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are

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under the control and management of the Secretary.

*Indian probate judge (IPJ)* means an attorney with OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases.

*Interested party* means any of the following:

(1) Any potential or actual heir;

(2) Any devisee under a will;

(3) Any person or entity asserting a claim against a decedent's estate;

(4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or

(5) Any co-owner exercising a purchase option.

*Intestate* means that the decedent died without a valid will as determined in the probate proceeding.

*Judge*, except as used in the term "administrative judge," means an ALJ or IPJ.

*LTRO* means the Land Titles and Records Office within BIA.

*Probate* means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent's estate is applied in order to:

(1) Determine the heirs;

(2) Determine the validity of wills and determine devisees;

(3) Determine whether claims against the estate will be paid from trust person-  
ality; and

(4) Order the transfer of any trust or restricted land or trust person-  
ality to the heirs, devisees, or other persons or entities entitled by law to receive them.

*Restricted property* means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purposes of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term "restricted property" as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Trust personalty* means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

*Trust property* means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

*Will* means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

[73 FR 67287, Nov. 13, 2008]

#### §§ 4.202–4.308 [Reserved]

#### GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: 70 FR 11825, Mar. 9, 2005, unless otherwise noted.

#### § 4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is:

(1) For most documents, the date of mailing or the date of personal delivery; or

(2) For a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e), the date that the Board receives the motion.

(b) *Serving notices of appeal and pleadings.* Any party filing a notice of appeal or pleading before the Board must serve copies on all interested parties in the proceeding. Service must be accomplished by personal delivery or mailing.

(1) Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party.

(2) Where a party is represented by more than one attorney, service on any one attorney is sufficient.

(3) The certificate of service on an attorney or representative must include the name of the party whom the attorney or representative represents and

indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document:

(1) The day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included;

(2) The last day of the period is to be included, unless it is a nonbusiness day (*e.g.*, Saturday, Sunday, or Federal holiday), in which event the period runs until the end of the next business day; and

(3) When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal holidays, and other nonbusiness days are excluded from the computation.

(d) *Extensions of time.* (1) The Board may extend the time for filing or serving any document except a notice of appeal.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

#### § 4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receiving the notice of docketing. The appellant must serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel will have 30 days from receiving the appellant's brief to file answer briefs, copies